

BOX M

PTO/SB/65 (03-09)

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**PETITION TO ACCEPT UNAVOIDABLY DELAYED PAYMENT OF
MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(b))**

Docket Number (Optional)
PISH014

Mail to: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450
Fax: (571) 273-8300

12/06/2012 DALLEN 00000011 6309421
01 FC:1599 2150.00 CP

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

Patent Number: 6309421

Application Number: 09/290,831

Issue Date: 10/30/2001

Filing Date: 4/13/1999

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number (or reissue patent number, if a reissue) and (2) the application number of the actual U.S. application (or reissue application) leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

Also complete the following information, if applicable:

The above-identified patent:

- ☐ is a reissue of original Patent No. _____ original issue date _____
original application number _____
original filing date _____
- ☐ resulted from the entry into the U.S. under 35 U.S.C. 371 of international application
_____ filed on _____

2012 DEC -3 PM 3:01

CERTIFICATE OF MAILING OR TRANSMISSION (37 CFR 1.8(a))

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is

(1) being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 OR

(2) transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

11/26/2012

Date

Tanya Taylor
Signature

Tanya Taylor

Typed or printed name of person signing Certificate

[Page 1 of 4]

This collection of information is required by 37 CFR 1.378(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 8 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

1. SMALL ENTITY

☒ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27

2. LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

3. MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition, unless it was paid earlier.

NOT Small Entity			Small Entity		
Amount	Fee	(Code)	Amount	Fee	(Code)
<input type="checkbox"/> \$ _____	3 ½ yr fee	(1551)	<input type="checkbox"/> \$ _____	3 ½ yr fee	(2551)
<input type="checkbox"/> \$ _____	7 ½ yr fee	(1552)	<input checked="" type="checkbox"/> \$ 1450.00	7 ½ yr fee	(2552)
<input type="checkbox"/> \$ _____	11 ½ yr fee	(1553)	<input type="checkbox"/> \$ _____	11 ½ yr fee	(2553)

MAINTENANCE FEE BEING SUBMITTED \$ 1450.00

4. SURCHARGE

The surcharge required by 37 CFR 1.20(i)(1) of \$ 700.00 (Fee Code 1557) must be paid as a condition of accepting unavoidably delayed payment of the maintenance fee.

SURCHARGE FEE BEING SUBMITTED \$ 700.00

5. MANNER OF PAYMENT

- ☒ Enclosed is a check for the sum of \$ 2150.00
- ☐ Please charge Deposit Account No. _____ the sum of \$ _____
- ☐ Payment by credit card. Form PTO-2038 is attached.

6. AUTHORIZATION TO CHARGE ANY FEE DEFICIENCY

- ☐ The Director is hereby authorized to charge any maintenance fee, surcharge or petition fee deficiency to Deposit Account No. _____

2012 DEC -5 PM 3:01

7. OVERPAYMENT

As to any overpayment made, please

☐ Credit to Deposit Account No. _____

OR

☒ Send refund check**WARNING:**

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

8. SHOWING

The enclosed statement will show that the delay in timely payment of the maintenance fee was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that this petition is being filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The statement must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which the patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

9. PETITIONER(S) REQUESTS THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED.



Signature(s) of Petitioner(s)

11/26/2012

Date

Usha Menon

Typed or printed name(s)

56,570

Registration Number, if applicable

2825 Wilcrest Drive, Suite 486

Address

(713) 975-0800

Telephone Number

Houston, Texas 77042

Address

2012 DEC -5 PM 3:01

ENCLOSURES:

- ☒ Maintenance Fee Payment
☒ Statement why maintenance fee was not paid timely
☒ Surcharge under 37 CFR 1.20(i)(1) (fee for filing the maintenance fee petition)
☒ Other: Exhibits A and B

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."



Signature

11/26/2012

Date

Usha Menon

Type or printed name

56,570

Registration Number, if applicable

STATEMENT

(In the space below, please provide the showing of unavoidable delay recited in paragraph 8 above.)

See attached document for statement of showing along with the supporting exhibit evidence documents.

(Please attach additional sheets if additional space is needed)

Privacy Act Statement

The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

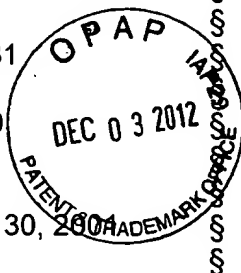
In re Patent Number: 6,309,421

Issued to: Pisharodi, Madhavan

Serial No.: 09/290,831

Filed: April 13, 1999

Issue Date: October 30, 2001



Attention: Office of Petitions

Transmittal Letter:

Petition to Accept Unavoidably Delayed

Payment of Maintenance Fee in Expired Patent

Title: Rotating, Locking Intervertebral Disk
Stabilizer and Applicator

Atty. Docket No.: PISH014

**STATEMENT OF SHOWING FOR UNAVOIDABLY DELAYED MAINTENANCE FEE PAYMENT
FOR EXPIRED PATENT (37 CFR 1.378(C))**

Attn: Office of Petitions
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Patentee presents the attached Petition to Accept an Unavoidably Delayed Payment in an Expired Patent.

The delay in payment of the maintenance fee was unavoidable.

Patentee presents payment of the 7.5 year maintenance fee of \$1,450. See 37 CFR 1.20 (f) and the appropriate surcharge of \$700 is also included with this Petition, thereby satisfying the condition provided by 37 CFR § 1.20(i), for a total of **\$2,150.00**.

STATEMENT OF SHOWING

The maintenance fee was unavoidably delayed because the patent owner's then attorney of record, Mark Wisner, failed to continue his duty of apprising the patent owner, Dr. Madhavan Pisharodi, of impending deadlines, including maintenance fees and current statuses, related to his patent portfolio. The attached correspondence from Dr. Pisharodi to Mr. Wisner (labeled Exhibit A) shows proof Dr. Pisharodi never received any notification and was unaware that the maintenance fee was due. Dr. Pisharodi also attempted to schedule meetings with Mr. Wisner on several occasions to discuss his patent portfolio and his requests went unanswered.

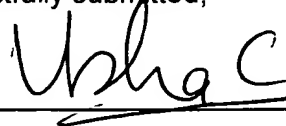
After several requests to meet with Mr. Wisner to discuss his patent portfolio went unanswered, Dr. Pisharodi, who was still unaware of the instant patent's expiration occurring from failure to pay the 7.5 year maintenance fee, engaged new counsel, the undersigned of D'Ambrosio & Menon, and asked that we assume representation of his I.P. matters.

The attached correspondence (labeled Exhibit B) shows further evidence of Mr. Wisner's unresponsive behavior, as various letters requesting that Dr. Pisharodi's files be transferred to us, forwarded via US Certified Mail, email and fax, went ignored and refused.

It has just come to the patent owner's attention that the subject patent is expired and the patent owner respectfully requests reinstatement of the same. The maintenance fee and surcharge required have been submitted herewith.

Date: 11/26/12

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Usha C', written over a horizontal line.

Usha Menon
Registration No. 56570
D'Ambrosio & Menon, PLLC
2825 Wilcrest Drive, Ste. 486
Houston, Texas 77042
Phone: (713) 975-0800
Fax: (713) 975-0995



Madhavan Pisharodi, M.D.

Board Certified: Neurological Surgery • Assistant Professor, Neurosurgery, UTMB, Galveston

Cathryn L. Garnett, M.S.N., C.N.S., F.N.P.

Family Nurse Practitioner

February 20, 2012

Via fax: 713-785-0561

Via E-mail: mwisner@wt.net

Mark R. Wisner
1177 West Loop South
Suite 400
Houston, TX 77027-9012

EXHIBIT A

Dear Mr. Wisner:

Your letter dated February 13, 2012 was both unjustified and unfriendly. I have never asked you to finance my business but have repeatedly asked you to clean up your billing department.

You have done work for me for over 15 years. For the first 10 years I paid everything you billed. Then I realized that you were not billing properly. I showed you the proof and you elected to do **NOTHING** about it.

I made several suggestions and you never followed them. The last payment I made to you for \$4,558.98 check # 3409 was a double payment. You accepted the fact and promised to do something about it. You never followed up. I invited you and your billing personnel to meet with me and come to an agreement on future billings. You agreed to do this, but never followed up. What did you expect me to do? Did you expect me to keep paying your incorrect billings? You have also used this as an excuse to fail some of your legal responsibilities and this has resulted in damage to my patents.

Until we can come to some agreement I want you to transfer my file to attorney Ms. Usha Menon. This is to make sure that your perceived nonpayment from my office will not hurt my patents any further. We will then continue to negotiate.

Thanks,

Madhavan Pisharodi, MD

CC: Usha Menon

D'Ambrosio & Menon PLLC

INTELLECTUAL PROPERTY LAW

www.dmiplaw.com

Usha Menon
umenon@dmiplaw.com

October 02, 2012

Via Certified Mail No.: 7009 2250 0003 1390 8717

Mark Wisner
Wisner & Associates
1177 West Loop South, Ste. 400
Houston, Texas 77027

EXHIBIT B

Re: Transfer of Files

Dear Mr. Wisner:

Further to previous correspondences and in accordance with Dr. Madhavan Pisharodi's attached request (which was previously forwarded directly to you), **please contact our office to schedule a convenient time (preferably next week, October 8-12, 2012) to retrieve the following files:**

- Your File PISB.029; Rotating Intervertebral Body with Pivoting Lock
- Your File PISB,031: Cage System
- Your File PISB,032: UNIMAX CIP
- Your File PISB,033:: Interspinous Plating System
- Your File PISB,034: ADR
- Your File PISB,035: Anterior Cervical Cage
- Your File PISB,036: Transcutaneous Vibratory Device

As previously advised, we now represent Dr. Pisharodi with respect to his intellectual property matters and as such, he has entrusted our firm to assume representation of these files. **We also ask that you forward us files for the U.S. and international applications pertaining to SARAL, Unimax, and any other Intellectual Property matters that you are handling for this client that are not listed above.** As you are aware, any client files are the property of the client and as such, we kindly request that any and all physical IP files in your possession for Dr. Pisharodi are turned over accordingly

We look forward to hearing from you as soon as possible to confirm the day and time for the file pick up. If you have any questions about this request, please do not hesitate to contact me.

Sincerely,

/Usha Menon/

Usha Menon
Managing Attorney

CC: Dr. Madhavan Pisharodi

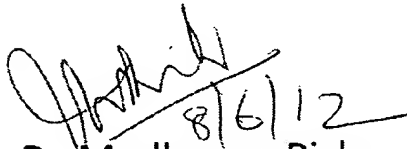
UCM:tnt
Enclosure

Letter of Authorization

To whom it may concern,

I hereby authorize Ms.Usha Menon,
Intellectual Property Attorney, D' Ambrosio & Menon P.L.L.C to
acquire all files and drawings of my pending patents from
Mr.Mark Wisner, Patent Attorney, Wisner and Associates.

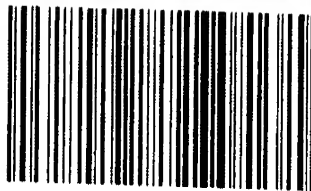
Thanks

A handwritten signature in black ink, appearing to read 'Madhavan', with the date '8/6/12' written below it.

Dr.Madhavan Pisharodi

D'Ambrosio & Menon, PLLC
2825 Wilcrest Drive, Suite 486
Houston, Texas 77042

CERTIFIED MAIL™



7009 2250 0003 1390 8717

stampai.com

\$5.750

US POSTAGE
FIRST-CLASS
062S0007600512
77042



10/23/12

Mark Wisner
Wisner & Associates

1177
Hous

NIXIE

773 DC 1 00 10/23/12
RETURN TO SENDER

REFUSED

UNABLE TO FORWARD

BC: 77042604811 *1433-07916-03-41

77042@CC48



PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS. FOLD AT DOTTED LINE

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mark Wisner
Wisner & Associates
1177 W. Loop South
Ste. 400
Houston, TX 77027

2. Article Number

(Transfer from service label)

7009 2250 0003 1390 8717

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail

☐ Express Mail

☐ Registered

☒ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540